



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Systems & Processes Engineering Corp.--
Request for Reconsideration
File: B-234142.2
Date: August 30, 1989

DIGEST

Request for reconsideration contending that earlier decision failed to address certain alleged violations of procurement regulations is denied where the decision, while not specifically citing the regulations, did address the relevant substantive issues relating to each.

DECISION

Systems & Processes Engineering Corporation (SPEC) requests reconsideration of our decision, Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441, denying its protest of the award of a fixed-price contract to Comsystems under request for proposals (RFP) No. F41608-88-R-5375, issued by the Air Force to expand its Comprehensive Engine Management System. SPEC argues that we failed to consider a number of issues raised in its protest and complains that our analysis of other issues was in error.

We deny the request for reconsideration.

The protested procurement was conducted pursuant to the streamlined source selection procedures in effect for the Air Force Logistics Command (AFLC) in its supplement to the Federal Acquisition Regulation (FAR). See AFLC FAR Supp. § 15.612-91. The RFP provided that award was to be made on the basis of the offer providing the best overall value to the government based on three evaluation factors listed in descending order of importance--technical, management and price/cost. In the final agency analysis, out of four offers remaining in the competitive range, SPEC's was ranked last in a combined evaluation of the technical and management factors; Comsystems' was ranked first. With respect to the least important evaluation factor, price/cost, offerors were required by the RFP to submit prices as well as detailed cost information which was to be examined for completeness, realism and reasonableness. In the price

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analysis contained in their briefing to the source selection authority (SSA), the evaluators took no exception to Comsystems' final proposed price of \$14,297,255 and to its underlying cost information. While SPEC's initial price--which had been clustered at about \$14 million with the others received--had been regarded as reasonable by the agency, the price contained in its best and final offer (BAFO) of \$11,387,918 was questioned by the evaluators as being unreasonably low and because, in their view, it presented unacceptable risks. The results of the technical/management and price/cost evaluations were presented to the SSA who decided to award the contract to Comsystems.

Alleged Procurement Law Violations

In its request for reconsideration, SPEC asserts that we ignored specifically alleged violations of the procurement regulations and implies that our analysis of its arguments was otherwise incorrect. As the following discussion of each of the regulations indicates, while they were not specifically cited in our decision, the substantive issues relating to each were thoroughly examined in the context in which SPEC raised them.

In its comments on the agency report, SPEC specifically alleged that the Air Force improperly "[s]cored" the price/cost factor. Quoting in part from a general description of the award contained in the agency report--"[a]ward was made to the best overall value; that is the contractor with the highest rated technical aspects and the highest rated management at a complete, reasonable and realistic price"--SPEC concluded that this language indicated that price was a "go, no-go" factor and "not given a ranked evaluation in the evaluation process." Such a "failure to apply a ranked evaluation" was, in SPEC's estimation, a direct violation of AFLC FAR Supp. § 15.612-91(c)(2) which, in turn, our earlier decision allegedly failed to address.

The cited regulation states: "[w]hile the importance of price/cost will vary from acquisition to acquisition, it will always be a ranked evaluation area." While not citing the regulation mentioned by SPEC^{1/}, our prior decision

^{1/} The regulation cited here, as well as the other AFLC FAR Supp. citations, concern internal Air Force procedures. Compliance with such regulations themselves generally does not provide a basis for questioning the validity of the award selection. See True Machine Co., B-215885, Jan. 4, 1985, 85-1 CPD ¶ 18. In any event, as we explain in this decision, the agency complied with its procedures.

explicitly set forth the RFP evaluation factors in the order in which they were ranked--"technical, management and price/cost." On page 7 of our decision, which discussed the Air Force's price/cost evaluation, we quoted at length from the evaluators' analytical report of SPEC's final price/cost proposal, which was presented to the SSA for his consideration together with the final technical reports. Such an analysis clearly was much more than a "go, no-go" evaluation as alleged, and was consistent with the procedures called for in streamlined source selections.

SPEC also alleged that FAR § 15.608 was violated because the contracting officer "failed to document any meaningful cost or price evaluation." In pertinent part, FAR § 15.608(a)(1) provides:

"The contracting officer shall use cost or price analysis . . . to evaluate the cost estimate or price, not only to determine whether it is unreasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation."

As indicated above, our prior decision quoted from the report to the SSA from the evaluators on SPEC's final price/cost proposal, and shows that the evaluators did indeed document their assessment of SPEC's price proposal. Instead of focusing on the details of the documentation process, our decision placed its emphasis on whether or not the price/cost analysis--which had obviously been documented--was reasonably based. We concluded from the record that, at best, SPEC had established its disagreement with part of the Air Force's analysis, but had left largely unaddressed the agency's overall conclusions concerning the risks inherent its final price proposal. Under these circumstances, and in the absence of any relevant argumentation and evidence to the contrary in SPEC's request for reconsideration, we remain of the view that the protester has not shown that the agency's analysis was unreasonable. See Systems & Processing Eng'g Corp., B-232100, Nov. 15, 1988, 88-2, CPD ¶ 478 (protester's mere disagreement with the agency's judgment does by itself show that it is unreasonable).

SPEC also argued that, since the Air Force did not request an audit of its BAFO, the agency violated AFLC FAR Supp. § 15.612-91(g)(5), which, in the protester's view, "requires that the [contracting officer] request audits or pricing support" in examining a price/cost proposal.

AFLC FAR Supp. § 15.612-9(g)(5) applies to the evaluation of initial proposals, not to BAFO's. As discussed above, and as our earlier decision recognized, the Air Force's problems with SPEC's price/cost proposal did not arise until the submission of its BAFO, which, in the agency's view, contained an insufficient rationale in support of the changes from the firm's initial proposal. Even if we were to conclude that the regulation applied to BAFOs, the language of AFLC FAR Supp. § 15.612-9(g)(5) is permissive, not mandatory, as argued by SPEC. It provides that the contracting officer "should request audits and/or field pricing support to the extent necessary to assure reasonableness, realism, and completeness of proposed cost/prices." We have long recognized that in such circumstances, contracting officers have considerable discretion in deciding whether to request audits. See e.g., Robert E. Derecktor of Rhode Island, Inc. et al., B-211922 et al., Feb. 2, 1984, 84-1 CPD ¶ 140. Moreover, in discussing the substance of the issues presented by the protester, our prior decision indicated that the Air Force had, in fact, considered SPEC's explanation regarding the lower costs to be obtained from its supplier, and had reasonably concluded that these were offset by other risks inherent in changes presented by its BAFO. As the decision indicated, SPEC simply did not present any substantive rebuttal to this analysis during our consideration of its protest, and none is presented in its request for reconsideration.

SPEC also alleged in its initial protest that the agency's designation of a "weak point" in its technical proposal relating to its staffing constituted a violation of FAR § 19.201 (generally outlining the government's policy to award a fair proportion of contracts to small businesses), in that it was allegedly denied an opportunity to effectively compete because it was not a large business with a large, full-time staff.

Contrary to SPEC's request for reconsideration, this matter was fully addressed in our earlier decision. As we indicated, in its technical evaluation, the agency reasonably assigned a degree of performance risk to SPEC's proposal to use an "associate staff" in the performance of the contract because the staff was admittedly not in SPEC's full-time employ and its precise relationship to the firm

was not described in the offeror's proposal. More specifically, we found "no basis for SPEC's contention that the evaluation of its staffing proposal was an indication of an agency bias against small business," and we noted that, in the absence of a set-aside for small business, there was "no legal basis for considering SPEC's status as a small business in the evaluation of its offer." ICSD Corp., B-222478, July 7, 1986, 86-2 CPD ¶ 37.

As the foregoing discussion shows, while the precise regulations mentioned by SPEC in its protest were not specifically cited in our earlier decision, the protester's substantive arguments relating to each were addressed. The mere repetition of SPEC's allegations that the regulations were in some way violated provides no legal or factual basis warranting a modification of our earlier decision. Bid Protest Regulations, 4 C.F.R. § 21.12(a) (1988).

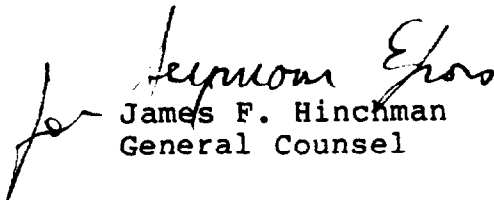
Other Contentions

Likewise, SPEC's suggestion that we incorrectly analyzed some of the issues it presented does not provide a basis for modifying our earlier decision. For example, SPEC's request for reconsideration reiterates its earlier speculation that Comsystems' employment of a former agency official during the course of the procurement may have improperly influenced the evaluation and the selection decision. As we indicated in the decision, SPEC provided nothing more than inference or supposition to support its position, and there is no evidence in the record to support the claim. Such unsupported claims are insufficient to establish prejudicial motives on the part of contracting officials. Systems & Processing Eng'g Corp., B-232100, supra. Also, SPEC questions our criticism of the Air Force's failure to give timely notice of its decision to proceed with contract performance pursuant to FAR § 33.104(d), suggesting that we have condoned a violation of law; however, as SPEC's own counsel stated in his final submission in the matter, the "various documents relating to the authorization to continue performance of the contract are irrelevant to the protest of the award itself" Our decision recognized this fact and urged the Air Force to comply with the notice requirement in the future. We do not agree with the protester that this shows that our Office "clearly condones FAR violations."

Finally, SPEC suggests that it is our function to justify the Air Force's selection of the higher priced Comsystems' proposal. That simply is not our role under this Office's bid protest function. That function is the responsibility of the contracting agency, which must bear the burden of any

difficulties resulting from a defective evaluation and source selection. See Pacord, Inc., B-224520.2, Mar. 6, 1987, 87-1 CPD ¶ 255. Since under the circumstances here the agency could properly make award to a higher priced, higher technically-rated offeror, our task is to review the record, including the protester's arguments, and decide whether the agency's judgment was rationally based. National Medical Seminars Temparmacists, B-233452, Feb. 22, 1989, 89-1 CPD ¶ 191. We did review the matter, and for the reasons set forth in detail in our prior decision, we concluded that the agency's decision was legally sufficient. The protester has supplied no additional argument or evidence which shows us that our decision was erroneous.

The request for reconsideration is denied.


James F. Hinchman
General Counsel